

“Individuals with Disabilities Education Improvement Act of 2004”

Changes Impacting Part C
ITCA Calls
December 2004

Conference Process

- Senate appointed conferees 9-21-04
- House appointed conferees 10-8-04
- Conference negotiations completed in private with all information embargoed
- Conference committee approved bill 11-17-04
- Bill made public on 11-18-04
- Passed by both House and Senate on 11-19-04

2004 IDEA Reauthorization

- Bill contains significant changes to IDEA
- Will be signed into law by the President on December 3, 2004
- A public law number will be assigned
- Next step will be development and promulgation of federal regulations
- Provisions go into effect July 1, 2005

Changes to Definitions

- Added sign language and cued language services
- Added vision specialists, including ophthalmologists and optometrists
- Report references that “special educators” includes “teachers of the deaf”

Changes to State Eligibility

Changes the requirement for States “to demonstrate” to the Secretary that the state has adopted the policy to ensure services to **“to provide assurances”** to the Secretary

Change to Statewide Policy

Added to the statewide policy to make early intervention services available to ...-
"...infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State... ."

Eligibility Criteria

- A **rigorous** definition of the term 'developmental delay' that will be used by the State in carrying out programs under this part **in order to appropriately identify infants and toddlers with disabilities that are in need of services under this part."**

Eligibility Report Language

“The Conferees intend that States establish rigorous standards for identifying and serving infants and toddlers with developmental delays. The Conferees believe that these standards should encompass a sufficient scope of developmental delays to ensure that these infants and toddlers receive the benefit of Part C services designed to lessen the infant or toddler's need for future or more extensive services.”

Changes to Child Find

“(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources **and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this part that will reduce the need for future services.**”

Changes to Referral Language

- "... to all primary referral sources, especially hospitals and physicians, of information **to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications,** on the availability of early intervention services **under this part and of services under section 619,** and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities."
- Deletes the requirement in (a)(6) to have "procedures for determining the extent to which such sources disseminate such information..."

Report Language on Referral

"The Conferees intend that the public awareness program include a broad range of referral sources such as homeless family shelters, clinics and other health service related offices, public schools and officials and staff in the child welfare system."

Changes to Personnel Standards

- Changed the term “**standards**” to the term “**qualifications**”
- Deletes the following language in (a)(9)(B) of current law- “to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State... .”

Changes to Personnel Standards

"A State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9) *deletes* consistent with state law, within 3 years."

Changes to CSPD

- Eliminated Part B CSPD requirement
- Changed the “may” to “**shall**” for most topics (recruitment/retention, promoting preparation of qualified staff, transition)
- Added “**training personnel in the emotional and social development of young children**” as an optional topic

Changes to Natural Environment

- (A) to the maximum extent appropriate, early intervention services are provided in natural environments; and
- (B) the provision of early intervention services for any infant or toddler **with a disability** occurs in a setting other than a natural environment **that is most appropriate, as determined by the parent and the individualized family service plan team**, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment."

Report Language

Natural Environment - "The legislation amends current law to recognize that there may be instances when a child's individualized family service plan cannot be implemented satisfactorily in the natural environment. The Conferees intend that in these instances, the child's parents and the other members of the individualized family service plan team will together make this determination and then identify the most appropriate setting in which early intervention services can be provided."

Birth to Six Statewide Option

- New optional statewide system developed and implemented jointly by the lead agency and the State Educational Agency;
- Parents of children with disabilities who are eligible for services under section 619 and previously received services under Part C, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) until state eligibility for kindergarten.

B to 6 (cont)

- Parents of children served under this option are provided annual notice that contains:
 - a description of the right to receive services under this option or under Part B; and
 - an explanation of the differences between the two options, including—
 - types of services and the locations of services;
 - procedural safeguards; and
 - possible costs (including any fees to be charged as charged to parents of children in Part C;

B to 6 (cont)

- Services under this option must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;
- State policy cannot affect the right of a Part B eligible preschool child to receive a free appropriate public education under Part B;

B to 6 (cont)

There will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 320 of the Family Violence Prevention and Services Act).

B to 6 Funding

“For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 exceeds \$460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 635(c) in order to facilitate the implementation of such policy.”

B to 6 Funding

- A participating State receives an “amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants”
- No State shall receive “an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.”

Changes to IFSP Content

“(3) a statement of the **measurable results or outcomes** expected to be achieved for the infant or toddler and the family, **including pre-literacy and language skills, as developmentally appropriate for the child,** and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the **results or outcomes** is being made and whether modifications or revisions of the **results or outcomes** or services are necessary;”

Changes to IFSP Content

"(4) a statement of specific early intervention services **based on peer-reviewed research, to the extent practicable**, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;"

CAPTA Language

"(6) a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who--

(A) is involved in a substantiated case of child abuse or neglect; or

(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;"

CAPTA Report Language

"The Conferees intend that every child described in 637(a)(6)(A) and (B) will be screened by a Part C provider or designated primary referral source to determine whether a referral for an evaluation for early intervention services under Part C is warranted. If the screening indicates the need for a referral, the Conferees expect a referral to be made. However, the Conferees do not intend this provision to require every child described in Section 637 (a)(6)(A) and (B) to receive an evaluation or early intervention services under Part C."

Changes to Transition

(A) to ensure a smooth transition for toddlers receiving early intervention services under this part **(and children receiving those services under section 635(c))** to preschool, school, other appropriate services, **or exiting the program**, including a description ...

Transition

- Changes “up to 6 months” to “**not more than 9 months**” in the language at (a)(9)(A)(ii)(II) related to timelines for convening the transition conference for children who may be eligible for Part B preschool services.
- Adds language to the existing requirement to establish a transition plan under (a)(9)(C) as follows: “(C) to establish a transition plan, **including, as appropriate, steps to exit from the program;**”

Collaboration

- Adds a new application requirement to address “(10) a description of State efforts to promote collaboration among Early Head Start programs under section 645A of the Head Start Act, early education and child care programs, and services under part C; and”

Assurances

(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, **homeless**, and rural families **and children with disabilities who are wards of the State**, in the planning and implementation of all the requirements of this part; and

Changes to Payor of Last Resort

“The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure--

- (i) the provision of, and financial responsibility for, services provided under this part; and
- (ii) such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any such dispute.”

Payor of Last Resort

If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

Payor of Last Resort

Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

Payor of Last Resort

- Requirement can be met by:
 - State statute or regulation;
 - Signed agreements between agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
 - Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

SICC Members

Added new required members to the SICC in (b) including representatives from: **the State Medicaid agency, the Office of the Coordinator of Education of Homeless Children and Youth, the State child welfare agency responsible for foster care, the State agency responsible for children's mental health.** In addition, the term "governance" was changed to "**regulation**" in relation to the agency responsible for the State **regulation** of health insurance.

FICC

The FICC has been eliminated.

Part B IEP Change

“(D) IEP TEAM TRANSITION- In the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.”

Part B IEP Change

“(B) PROGRAM FOR CHILD AGED 3 THROUGH 5- In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is--

- (i) consistent with State policy; and
- (ii) agreed to by the agency and the child's parents.”

Conference IEP Language

"The Conferees recognize that ensuring that a smooth transition from the Part C system to the Preschool Program or to school is vital for a child's educational success. It is the Conferees' intent that during the initial IEP meeting for a child transferring from the Part C program the types of services the child received as part of the IFSP are discussed. The Conferees understand that services provided through the Part B program may differ in frequency, duration, and environment, however, the IEP Team should explain the changes in services in the initial IEP meeting. The Conferees do not intend that a State or district reduce any service a child would be otherwise eligible for under Part B."

Other Changes Made to IDEA

- There may be changes made to Part C regulations based upon definitional changes made to Part A of IDEA including changes in the definitions of “parent”, “assistive technology devices”, “homeless children”, “ward of the state” etc.
- Part D changes made to the SIG should increase the availability of early childhood training resources.

Monitoring Changes in Section 616

- New system is called “Monitoring, Technical Assistance and Enforcement”
- The Secretary shall:
 - Monitor through oversight of State’s general supervision and State Performance Plans;
 - Enforce; and
 - Require States to monitor and enforce

Focused Monitoring

- Primary focus of federal and state monitoring:
 - “improving educational results and functional outcomes for all children with disabilities”; and
 - ensuring States meet program requirements “with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.”

Monitoring Priorities

- The Secretary shall monitor States and require States to monitor LEAs using quantifiable and qualitative indicators to measure performance in specified areas:
 - FAPE;
 - State's general supervisory authority (e.g. child find, monitoring, mediation, transition (637(a)(9)),; and
 - Disproportionality

Permissive Areas of Review

- Secretary shall consider other information including Section 618 data

State Performance Plans

- Within one year of enactment, each State shall submit to Secretary a Performance Plan that “evaluates the State’s efforts to implement the requirements and purposes of this part and describes how the state will improve such implementation.”
- Extensive language included on federal approval process
- Plans must be reviewed by States at least once every 6 years with amendments submitted to the Secretary

Targets and Data Collection

- States must establish measurable and rigorous targets for the indicators established under the 3 priority areas;
- States must collect valid and reliable information and report annually on the priority areas;
- States must report annually to the public and the Secretary on the plan

Enforcement

- Language describes 3 levels of enforcement with timelines and federal actions:
 - Needs Assistance
 - Needs Intervention
 - Needs Substantial Intervention
- Secretary must report to the Congress on any enforcement actions taken and why

Federal Enforcement

Maintains procedures in current law for withholding of funds and judicial review and public notice

Monitoring Report Language

“The Conferees believe that accurate decision making with regard to enforcement of the IDEA is required in order to: (1) ensure that federal dollars are being spent productively on education, and, (2) to ensure that monitoring and enforcement is administered fairly.

It is our expectation that state performance plans, indicators, and targets will be developed with broad stakeholder input and public dissemination.”

More Report Language

“The Secretary is directed to monitor states using rigorous targets and to request such information from states and stakeholders as is necessary to implement the purposes of IDEA, including the use of on-site monitoring visits and student file reviews, and to enforce the requirements of the IDEA.”

More Report Language

"Conferees strongly encourage the Secretary to review all relevant and publicly available data, including the data gathered under Section 618, related to the targets and priority areas established for reviewing the efforts of States and local educational agencies to implement the requirements and purposes of IDEA. The Secretary is also authorized to use qualitative measures to inform his decision-making process in determining the efforts of the State or LEA in implementing IDEA."

More Report Language

"Conferees recommend that the Secretary diligently investigate any root causes prior to selecting enforcement options, so that enforcement options are appropriately selected and have the greatest likelihood in yielding improvement in that state. However, investigations must not unduly delay the enforcement action."

Data Capacity and TA Review

- The Secretary shall:
 - Review State's data collection and analysis capacity; and
 - Provide technical assistance to improve State's capacity to meet data collection requirements
- The Secretary may reserve from Part B appropriation not more than .5% (maximum of \$25 M) a year for TA to improve State capacity to meet data requirements

Administration - Section 617

The Secretary shall Publish and disseminate widely model forms for IEPs, IFSPs, Notice of Procedural Safeguards and Prior Written Notice

Changes To Data – Section 618

- States must make data available to the public;
- Adds percentage and gender to collection of data of numbers of children receiving ei services and who stop receiving services;
- Adds percentage to collection of data on at risk children receiving services